Supreme Court, U.S.
FILED
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No.

In the
Supreme Court of the United States

NORMAN W. DEPLUZER,

Petitioner,

vs.

THE STATE OF ILLINOIS and THE VILLAGE OF WINNETKA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the State of Illinois be allowed to deprive Norman DePluzer his "right to trial and due process" as guaranteed by the 14th Amendment, and Article I, Section 2 & 13 of the Illinois State Constitution, by departing from the usual and accepted course of judicial proceedings?

2. Why is Norman DePluzer denied the use of "Certification of State Law" as provided in the Federal Rules of Appellate Procedures?

3. Since the United States Court of Appeals for the Seventh Circuit has ruled "lack of jurisdiction", isn't it now prudent that this case be heard by the United States Supreme Court?

LIST OF PARTIES

Parties to this proceeding are:

Norman DePluzer,	Petitioner-Plaintiff
The Village of Winnetka,	Respondent-Defendant
The State of Illinois,	Respondent-Defendant

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The decision of the United States Court of Appeals for the Seventh Circuit, and the United States District Court, Northern District of Illinois "lack of jurisdiction", are attached in the appendix. Also reflected in the appendix is the decision and opinion of the Appellate Court of Illinois, First District-Fifth Division.

JURISDICTION

The jurisdiction of this court to review the orders of the United States Court of Appeals, the United States District Court Northern District of Illinois Eastern Division, and the Illinois Appellate and Supreme Courts, is invoked under the United States Supreme Court Rule 10(a)(b)(c), Rule13.1 and 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution 14th Amendment:

> "Nor shall any state deprive any person of life, liberty or property without due process of law".

Illinois State Constitution, Article I:

Section 2:

"Due Process"

Section 13:

"Right to trial"

STATEMENT OF THE CASE

Norman DePluzer was terminated from the Village of Winnetka on September 2, 1986, the same day he filed his Illinois Worker's Compensation Claim. Diagnosed with partial permanent hearing loss, Norman DePluzer was advised by his medical specialist not to wear simultaneously, ear muffs and ear plugs as directed by the Village's supervisors, since DePluzer was experiencing discomfort/pain from doing so. DePluzer then filed a breach of contract and retaliatory discharge suit against the Village of Winnetka.

Pre-trial motions were filed by the Village Of Winnetka for Summary Judgment, claiming:

1. That DePluzer lied on his employment application.

2. That DePluzer failed to show any causal link between his filing of a worker's compensation claim and his termination.

Judge Sullivan ruled that: "There was no breach of contract, but there were disputed facts in evidence regarding retaliatory discharge, hence a trail was necessary." Both parties petitioned for review and judge Bosco was assigned the responsibility for the review. Judge Bosco ruled that: "There was breach of contract, but not retaliatory discharge", clearly an opposing ruling. In either situation, **trial was to be done, and this never happened.**

Appeals were filed with the Illinois Appellate Court, which ruled that DePluzer did not lie on his employment application, but because the Village of Winnetka was an "At Will Employer", breach of contract was void. Here the

Appellate Court went beyond its jurisdiction by ruling on an issue that was never presented by either party. Moreover, the Illinois Supreme Court has ruled on what constitutes a valid contract in Illinois, and here again, the Appellate Court has deviated from that ruling. The Appellate Court also ruled that "retaliatory discharge" was not proven since DePluzer filed his worker's compensation claim on the same day he was terminated. Shouldn't DePluzer be allowed to prove retaliation, and isn't it at trial that such proceeding is done? Petitions were then filed to the Illinois Supreme Court and the United States Supreme Court, but neither court would hear the case. DePluzer then proceeded to Federal Courts, which ruled, "lack of jurisdiction". DePluzer's second time in petitioning the United States Supreme Court to intervene and protect DePluzer's "right to trial & due process" is done in search of justice, and him exercising his constitutional right.

REASONS FOR GRANTING THE WRIT

The State of Illinois through the Illinois Appellate Court has unlawfully denied and deprived DePluzer of his right to trial and due process. Both of these rights are protected under the 14th Amendment and the Illinois State Constitution Article I, Sections 2 & 13. The compelling reasons for granting this petition are not only because DePluzer has exhausted all avenues of judicial proceedings, but also because:

A. Supreme Court Rule 10(a) states: "**a decision by state court has departed from the accepted and usual course of judicial proceedings**". Deviation is clearly evident in this case since the trial court through

judges Sullivan & Bosco ruled oppositely that factual matters are in dispute, hence a trail is necessary to determine the outcome of this case. Such rulings are consistent with the rule of law and the usual procedure in the State of Illinois. What the Appellate Court did by over-ruling these decisions and granting Summary Judgment to the Village of Winnetka, is deviation from such lawful proceedings. Summary Judgment is not used in any case in Illinois where there are matters in dispute, except in this case. For example, DePluzer placed into evidence:

1. "Exhibit B", a memoranda to the Village of Winnetka regarding unsafe working conditions.

2. DePluzer's form 45 to the Illinois Industrial Commission was dated August 12, 1986, and was produced by the Village at its deposition hearing, thus showing that the Village had this document from August, and not on September 2, 1986 as the Appellate Court reasoned.

3. There are also the Village's administrators' depositions that clearly have contradictory elements that are to be addressed in a court of law.

These conflicting matters are to be determined in a court of law, but the Illinois Appellate Court went outside the scope of it's authority by using summary judgment where so many facts are in dispute. See *Louisiana v. London*, 1971, Ed. La. 335 F. Supp. 585; *Huffman v. Pursue,* 1975, 95 S.Ct. 1200 U.S. 592, 43 L.Ed.2d 482.

B. Supreme Court Rule 10(b & c) are violated by this decision, because "due process and right to trial" are constitutional or Federal Matters that should be settled by this court. Likewise, **Supreme Court Rule 13.1** is

also applicable in this matter since there is timely filing throughout this case. A judgment is "property", and since consistency and fairness along with constitutional protection is of paramount importance to the highest court of this nation, then this case should be heard. Consistency and fundamental fairness is the traditional role and expectation of the United States justice system, and denial of one's right to trial must not only be seen as astonishing, but remedial actions must be taken to prevent this and future violations. Supreme Court Rule 10(a, b & c) have been violated in their entirety. See *Truax-Track Coal Co. v. Compensation Court,* 17 S.E.2d 330, 334, 123; *Linden v. Dickerson*, C.A. CAL. 1961, 287 F.2d 55; *A. Aiudi & Sons v. Town of Plainville,* D. Conn. 1994, 862 F.Supp. 737.

C. The United States Court of Appeals Rule XX CERTIFICATION OF STATE LAW states: "when the rules of the highest court of a state provide for certification to that court by a Federal court of state law questions which will control the outcome of an appeal, the court of appeals, sua-sponte or on motion of one of the parties, may certify such a question to the state Court. Cir. R. 52(a)." The Illinois, Indiana and Wisconsin Supreme Courts have such rules. Motions to certify are to be included in the brief, but the moving party should call it to the clerk's attention by noting it on the cover of the brief. DePluzer is a party to this dispute and he attempted to use this procedure, and again, the legal system denied his legitimate use of this procedure.

D. Depositions, affidavits, counter-affidavits, exhibits and the Village's Handbook are all part of the State Court's File, yet there is the Appellate Court's ruling

which contradicts these documents. For example, the Appellate Court ruled that there was "No grievance procedure that the Village had to follow before terminating DePluzer, and as such this placed DePluzer in the 'At-will' category". Certainly there is a grievance procedure as established by the Village of Winnetka, and it is frightening that the Appellate Court can disregard material evidence that was placed into evidence.

Since fundamental fairness and equal protection are issues that the court is concerned with, there must be some reasonable explanation why documents presented into evidence are disregarded. The Illinois Appellate Court ruled that it *reviewed* the issues involving *DePluzer v. The Village of Winnetka*, prior to its ruling. Even if this court did not review these case documents, it is the court's responsibility to do so to ensure fairness and the unbiased application of law. It is also important to note that the Appellate Court went beyond the requirements of what constitutes a contract in Illinois, since the Illinois Supreme Court ruling in *Nora E. Duldulao v. Saint Mary of Nazareth Hospital Center,* 505 N.E.2d 314, 115 Ill. 2d 482, 106 Ill. Dec. 8 states what constitutes a valid contract in Illinois. These documents are part of the Court's File, so there is no justification for them not to be seen. Because of their existence in the record, and because they contradict the Appellate Court's ruling, such ruling must be seen as a violation of law because: "malicious use and abuse of process are constitutional torts, since they are by definition a denial of procedural due process". *DiMaggio v. O'Brien*, D.C. PA. 1980, 497 F. Supp. 870. DePluzer's vested property right cannot be dealt with as

capriciously as the State of Illinois acted, because his rights are protected, just as those which enjoy full protection of the due process clauses of Federal and State Constitutions. *Morris v. Gross*, Tenn. 1978, 572 S.W.2d 902. Because the State of Illinois Appellate Court decision has unconstitutionally deprived DePluzer of "due process and a right to trial," such action creates a civil cause of action against public officials. See 42 U.S.C. § 1983.

CONCLUSION

The illegal use of Summary Judgment, the departure from normal judicial procedure, the reckless disregard of: exhibits, depositions, affidavits, the Village's Handbook that are part of the Court's file are in violation of jurisprudence, the law, and ultimately a violation of DePluzer's Constitutional Rights and Due Process Rights. The 14th Amendment's protection against a State depriving any person of Life, Liberty or Property without due process of Law has been extended by jurisprudence to traditional forms of real, personal and intangible property, hence, this case presents important federal questions that must be addressed by this court. See *DaVila Lopes v. Soler-Zapata*, D. Puerto Rico 1996, 916 F. Supp. 118.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Submitted November 15, 1999
Decided November 17, 1999

Before

HON. WILLIAM J. BAUER, Circuit Judge
HON. JOHN L. COFFEY, Circuit Judge
HON. DANIEL A. MANION, Circuit Judge

No. 99-2009

NORMAN W. DEPLUZER,

Plaintiff-Appellant,

v.

STATE OF ILLINOIS and
VILLAGE OF WINNETKA,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 99 C 947—Rebecca R. Pallmeyer, Judge.

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

ORDER

After the Village of Winnetka (Village) fired him from his job as a maintenance worker in 1986, Norman DePluzer filed a complaint against the Village in the Circuit Court of Cook County. He alleged that the Village had discharged him in breach of his employment contract (count I) and in retaliation for exercising his rights under Illinois' Workers' Compensation Act (count II). 820 Ill. Comp. STAT. 305/I-305/30 (West 1993). The Village moved for summary judgment which the trial court granted as to count I but denied as to count II. On appeal, the Illinois Appellate Court held that the Village was entitled to summary judgment on both counts of DePluzer's complaint. See DePluzer v. Village of Winnetka, 638 N.E.2d 1157, 1163 (Ill. Ct. App. 1994). DePluzer then filed a petition for rehearing, a petition for leave to appeal to the Illinois Supreme Court, and a writ of certiorari to the United States Supreme Court, all of which were denied.

On February 12, 1999, DePluzer filed a pro se complaint in the district court against the State of Illinois and the Village, alleging generally that the state court grant of summary judgment violated due process. The district court, on its own motion, dismissed DePluzer's case for lack of jurisdiction because it represented "in effect, a challenge to the Illinois Appellate Court's decision." The court then denied DePluzer's motion for reconsideration, and DePluzer appeals.

Although we construe DePluzer's pro se submissions liberally, see Guiterrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997), we agree with the district court that it lacked jurisdiction over DePluzer's claim. Under the

Rooker-Feldman doctrine, lower federal courts have no jurisdiction over claims seeking review of state court judgment. See Long v. Shorebank Dev. Corp., 182 F.3d 548, 554 (7th Cir. 1999) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Here, DePluzer presents no independent claim, but merely to set aside the judgment of the state court. His allegation that "[d]amage was done to . . . DePluzer by the Illinois Appellate Court's reasoning" is precisely the kind of claim that we repeatedly have held is barred by Rooker-Feldman. See Maple Lanes, Inc. v. Messer, 186 F.3d 823, 825 (7th Cir. 1999).

For the foregoing reasons, the judgment of the district court is AFFIRMED.

Opinion of the Appellate Court of Illinois
First District-Fifth Division
No. 1-93-1430—Filed June 30, 1994

NORMAN DEPLUZER,

Plaintiff-Appellee and Cross-Appellant,

v.

VILLAGE OF WINNETKA,

Defendant-Appellant and Cross-Appellee.

PRESIDING JUSTICE MURRAY delivered the opinion of the court:

The Village of Winnetka (Village) appeals and Norman DePluzer (DePluzer) cross appeals from an order of the circuit court which granted the Village's motion for summary judgment in its favor with respect to count I of DePluzer's amended complaint (a breach of employment contract claim), but denied the Village's motion for summary judgment with respect to count II of the amended complaint (a retaliatory discharge claim) and then granted DePluzer's motion for voluntary dismissal of the count. For reasons we shall discuss, we affirm in part and reverse in part.

In May 1983, DePluzer applied for a maintenance position with the Village of Winnetka.

DePluzer completed the Village's employment application form, providing his employment history and background. In June 1983 DePluzer was hired as a helper in the Village's utility plant department. He later was pro-

moted to "fireman" to work in the boiler room of the Village's electrical generating plant.

In August 1986, DePluzer notified his supervisor that he had a note from his physician indicating that he was suffering from progressive hearing loss and should not be exposed to loud noises in his work environment. Based upon this information, DePluzer and his supervisor completed an injury report on August 12, 1986.

In response to the injury report, the Village's plant superintendent, Fred Roberts, sent DePluzer a memorandum instructing him to protect his hearing by wearing, simultaneously, both types of hearing protection devices supplied to him by the Village, i.e., ear plugs and ear muffs, whenever he was in the power plant during working hours. DePluzer, however, refused to wear the two devices simultaneously, claiming that this caused him discomfort.

On August 18, 1986, upon learning that DePluzer was refusing to wear ear muffs in addition to ear plugs, in disregard of the directive contained in his memo, Roberts suspended DePluzer for one day. After this first suspension DePluzer returned to work, but continued to disobey the directive to wear the two devices simultaneously. Consequently, he was suspended again, this time for three days, and given a memorandum informing him that his continued refusal to comply with the safety directive would result in his dismissal.

On the morning of September 2, 1986 DePluzer filed a worker's compensation claim (form dated August 27, 1986) with the Illinois Industrial Commission. On the afternoon of September 2, 1986, DePluzer was discharged

from his employment with the Village. When discharged, DePluzer was given a written termination notice which indicated that his termination was the result of his consistent failure to wear hearing protection as directed.

On September 1, 1987, DePluzer filed a two count complaint against the Village, alleging that he had been wrongfully and retaliatorily discharged due to the fact that he had voiced complaints regarding working conditions. The complaint was later amended on April 26, 1988. In the amended complaint, count I alleged a breach of the employment contract as set forth in the employees' handbook regarding grievances. Count II, which again alleged retaliatory discharge, now claimed that DePluzer had been discharged as a result of his exercise of his rights under the Illinois Worker's Compensation Act (Act).

After a plethora of filings, amended filings, motions, counter-motions and responses and after mountains of discovery materials were requested, produced, submitted, and objected to, the Village filed a motion for summary judgment and DePluzer filed an emergency motion for voluntary dismissal without prejudice. Hearing was held on both of these motions on February 24, 1993, at which time the trial court entered an order which granted summary judgment in the village's favor on count I of the amended complaint (breach of employment contract claim), denied summary judgment to the Village on count II of the complaint (retaliatory discharge claim) and granted DePluzer's request for voluntary dismissal as to count II only. Motions to reconsider were filed by both parties and were denied on April 5, 1993. The Village appealed and DePluzer cross-appealed.

Before addressing the merits of the appeal and cross-appeal, we must first address a motion to dismiss for lack of appellate jurisdiction, which DePluzer filed with this court on November 24, 1993. Objections to the motion were filed by the Village, DePluzer filed a motion to reply to the Village's objections and the Village objected to DePluzer's motion to reply to their objections. The Village characterized the motion to dismiss as "frivolous" and suggests that this court impose sanctions against DePluzer in the form of costs and fees. This court decided to consider the entire matter with the case.

In DePluzer's motion to dismiss the Village's appeal, DePluzer contends that the order appealed from is not a final order. We note, however, that if the order appealed from is not a final order, we would be obliged to dismiss not only the village's appeal, but DePluzer's cross-appeal, as well, since they both appealed from the same order. Nevertheless, we shall consider the finality of the order appealed from.

It is axiomatic that this court has jurisdiction of only final orders. If the order appealed from does not dispose of the entire controversy as to all the parties or leaves any claims unresolved, then the order is not final, unless the trial court enters a finding that there is "not just cause to delay enforcement or appeal." (Ill. Rev. Stat. 1991, ch. 110A, par. 304(a).) This language, set forth in Illinois Supreme Court Rule 304(a), transforms an otherwise non final order into a final and appealable one. Judges in Cook County are notorious for their willingness to enter into such a finding. Why the attorneys in the case, who seem so adept at filing motions, neglected to request that such a finding be included in this order, in

order to dispel any doubt as to the finality of the order, is rather surprising.

In any event, as stated earlier, the finding is unnecessary if the order is final. In the present case the order appealed from granted summary judgment as to count I, denied summary judgment as to count II and granted DePluzer leave to voluntarily dismiss count II without prejudice. DePluzer argues that the Village's appeal of the trial court's decision to deny summary judgment on count II must be dismissed because the denial of a motion for summary judgment is not a final order.

Although DePluzer is correct that the denial of a motion for summary judgment is typically not appealable, the propriety of the denial may be considered if the case is properly before a reviewing court from a final judgment and no trial or hearing has been conducted. (Regnery v. Regnery (1991), 211 Ill. App. 3d 607, 613, 570 N.E.2d 557.) In this case the order is final and appealable because, in addition to denying summary judgment, the trial court granted DePluzer's motion to voluntarily dismiss this count, making the order final and appealable.

Our Illinois Supreme Court has determined that it is important that a defendant have the ability to appeal from an order of voluntary dismissal since, otherwise, such an order would never be subject to review. (Swisher v. Duffy (1987), 117 Ill.2d 376, 512 N.E.2d 1207; Dillie v. Bisby (1985), 106 Ill.2d 487, 478 N.E.2d 1338; Kahle v. John Deere Co. (1984), 104 Ill. 2d 302, 472 N.E. 2d 787.) Consequently, the order granting DePluzer a voluntary dismissal as to count II of his complaint is a final and appealable order, which brings before the reviewing court

all other orders and rulings directly associated with that judgment, including, in this case, the denial of summary judgment. This court, therefore, has jurisdiction to consider the appeals.

We now turn our attention to the appeals and cross-appeals before this court. The Village contends in its appeal that the trial court erred in denying the Village's motion for summary judgment with respect to count II, the retaliatory discharge claim. The Village presents two arguments in support of its claim that the trial court erred. First, the Village argues that the record clearly shows that DePluzer made false representations on his employment application form which, if known by the Village, would have been grounds for dismissal. The Village then cites a number of cases for the proposition that misrepresentations made on an employment application, even when discovered after the employee has been terminated, provide a legitimate basis for termination which makes the actual reason for termination immaterial. (See Bonger v. American Water Works (D. Colo. 1992), 789 F. Supp. 1102; Churchman v. Pinkerton's Inc. (D. Kan. 1991), 756 F. Supp. 515; Oaklawn v. Human Rights Comm'n (1988), 133 Ill. App. 3d 221, 224, 478 N.E.2d 1115.) In other words, whenever an employee has made misrepresentations on his employment application, that employee is subject to being terminated for cause. If the employee is later terminated, the termination will be upheld, even if the termination might otherwise be shown to be improper, discriminatory or pretextual. Because the trial court, in granting summary judgment on count I of the complaint, found that DePluzer made false representation on his employment application, the Village con-

tends that summary judgment should have been granted on the retaliatory discharge claim as well.

In the alternative, the Village argues that summary judgment should have been granted on count II of the complaint because DePluzer failed to show any causal link between his filing of a worker's compensation claim and his termination. The Village provided affidavits which indicated that the persons who decided to terminate DePluzer's employment were unaware that DePluzer filed or even intended to file a worker's compensation claim. Thus, the village argues, there is no evidence that the termination was motivated by DePluzer's exercise of his rights under the Act. Rather, the Village contends that the evidence supports the finding that the decision to terminate DePluzer was based solely upon DePluzer's refusal to comply with the safety precautions he was ordered to utilize.

DePluzer has filed no response to the Village's appeal. Instead, DePluzer merely presents argument on the issue he raises in his cross-appeal, i.e., whether the trial court erred by granting summary judgment in the Village's favor with respect to count I of the amended complaint, which alleged breach of employment contract. On this issue DePluzer argues only that summary judgment was erroneously granted because the trial court wrongly determined that he had lied on his employment application.

Having reviewed the case law, it seems clear that material misrepresentations made on an employment application constitute a breach of contract by the employee which justifies termination such that any subsequent termination, even if wrongful, improper, discriminatory

or done in retaliation of the employee's exercise of his rights, would be upheld. Thus, if the trial court's determination that DePluzer made material misrepresentations on his employment application was proper, both the breach of contract and the retaliatory discharge claims must fail and the trial court should have granted summary judgment on both counts. Due to this situation, we find it necessary to review the evidence presented regarding DePluzer's employment application to determine whether we can state, as a matter of law, that material misrepresentations were made in DePluzer's application to the Village.

The employment application completed by DePluzer asked, "Have you ever been convicted as an adult for a criminal violation?" DePluzer responded, "No" and put "N/A" after the follow-up question asking for the nature of the offense and place of occurrence. DePluzer also stated, "None" under the section heading "Conviction Information." The Village now claims that this was a false statement because DePluzer, in his evidence deposition, testified that he had been convicted of shoplifting in 1976.

However, DePluzer also testified during his deposition that he did not include information concerning conviction on his application because, although he had been found guilty of taking a $2.99 pair of gloves, he subsequently had the conviction expunged from his record and did not believe that he was required to acknowledge this conviction.

The second alleged falsehood contained in the application deals with his employment history. On the application DePluzer indicated that his last employer was Vul-

can Industrial Packaging Ltd. (Vulcan), which is located in Toronto, Canada. The reason he gave for leaving their employ was "resigned and immigrated to the U.S.A." However, when DePluzer was questioned regarding this previous employer at his deposition he indicated that he had been terminated, attended school for several months and then immigrated to the United States. When asked to explain, DePluzer testified that he had difficulties with Vulcan because he had refused to work in certain areas due to working conditions. He reported Vulcan to the Canadian Department of Labor, which apparently prompted one of Vulcan's supervisors to physically attack DePluzer. DePluzer was subsequently fired. In response, however, DePluzer filed a grievance with the union and the Department of Labor. As a result, he reached a settlement with Vulcan whereby he was allowed to resign, rather than be terminated and he was compensated for the attack by his supervisor.

It is the Village's contention that the above evidence clearly indicates that DePluzer intentionally made material misrepresentations on his application when he answered questions indicating that he had no convictions and that he had resigned from his last employment position. DePluzer disagrees and contends that, in light of the above evidence, the question of whether he listed false information on his application was one of fact for a jury to determine. For this reason alone, he concludes that summary judgment was improperly granted on count I of his complaint (breach of contract).

We find that we must agree with DePluzer's argument that his deposition testimony, taken as a whole, raises a question of material fact on the issue of whether he lied

on his employment application. One does not invariably reach the conclusion that the answers provided by DePluzer were false. (See Hugo v. Tomaszewski (1987), 155 Ill. App. 3d 906, 910, 508 N.E.2d 1139, 1142, where fair minded people could draw different inferences from the facts presented, the issue should be submitted to the trier of fact.) Therefore we do not believe that we can say, as a matter of law, that DePluzer made false representations on his employment application. Just as the issue of an employer's motive or intent is an issue of material fact not subject to summary judgment (Jones v. Burkart Foam, Inc. (1992), 231 Ill. App. 3d 500, 596 N.E.2d 882), so, too, is the question of whether DePluzer made material misrepresentations on the application under the circumstance presented here. While it is undoubtedly true that an employer would be interested in knowing the employment information that DePluzer testified to, DePluzer may have been entitled to withhold such information under the circumstances, so that his statements on his employment application may not have constituted falsehoods. Consequently, we believe that the trial court erred in deciding that DePluzer lied on his employment application.

Nevertheless, even though we agree with DePluzer on his one argument, we uphold the trial court's grant of summary judgment on count I, breach of employment contract claim, on other grounds. We do so on the basis that DePluzer failed to show that the Village's handbook created enforceable contractual rights which took him outside of the realm of an at-will employee who could be terminated without any cause or reason.

In the trial court DePluzer contended that the Village's handbook created an employment contract pursuant to Duldulao v. St. Mary of Nazareth Hospital Center (1987), 115 Ill. 2d 482, 505 N.E.2d 314. The language in the handbook quoted by DePluzer and relied upon to show a contract for permanent employment, terminable only for cause, is as follows:

> "You make your job security. The Village of Winnetka assures you of your position with the Village so long as you perform the requirements of your position satisfactorily. You may, however, be removed from your position for justifiable reasons."

However, DePluzer did not show that the handbook set forth any specific disciplinary procedures that the Village was required to follow before dismissal could be had. Therefore, in accordance with the reasoning of Tolbert v. St. Francis Extended Care Center (1989), 189 Ill. App. 3d 503, 545 N.E.2d 384 and Bjorn v. Associated Regional & University Pathologists, Inc. (1990), 208 Ill. App. 3d 505, 567 N.E.2d 417, there was insufficient evidence to show that the Village's handbook created an enforceable contract sufficient to overcome the presumption that the employment relationship was terminable at will. For this reason, DePluzer failed to make out a claim for breach of employment contract and summary judgment was properly granted on count I of the complaint.

We now turn our attention to the Village's appeal with regard to count II. On this matter, we believe that the trial court erred in denying summary judgment in the Village's favor on the retaliatory discharge claim. DePluzer claimed in count II of his amended complaint that he was terminated by the Village in retaliation for

the exercise of his rights under the Workers' Compensation Act. In order to establish a claim of retaliatory discharge of this sort, a plaintiff must show that he was an employee before he received injury, that he exercised his rights in accordance with the Act, that he was discharged and that the discharge was causally related to the exercise of his rights. (Miller v. J. M. Jones Co. (1992), 225 Ill. App. 3d 799, 803, 587 N.E.2d 654.) In this case DePluzer failed to show any link between his termination and his worker's compensation claim.

First of all, prior to his filing of the workers' compensation claim, DePluzer was suspended twice for failure to abide by the safety regulations imposed by management. Furthermore, DePluzer was informed that his continued failure to comply with safety measures would result in his termination. Lastly, DePluzer filed his compensation claim on the same day that he was terminated and his supervisors filed affidavits which indicated that they were unaware that a claim was filed when they terminated DePluzer. Consequently, we find no evidence that the valid and lawful reason given for DePluzer's termination was merely a pretext to obscure the fact that DePluzer was discharged in retaliation for filing a compensation claim. As stated in Miller v. J. M. Jones Co., 225 Ill. App. 3d at 808, the issue in these cases is not whether the employer treated the employee fairly, but whether the discharge was in retaliation for filing a workers' compensation claim. We believe, therefore, that summary judgment in favor of the Village should have been granted on count II of DePluzer's complaint and that the trial court erred when it denied the Village's motion for summary judgment and granted DePluzer's motion for voluntary dismissal.

For the reasons stated above, we affirm that portion of the trial court's order which granted summary judgment in favor of the Village on count I. We reverse that portion of the order which denied the Village's motion for summary judgment on count II and granted DePluzer's motion for voluntary dismissal, and we remand to the trial court so that summary judgment may be entered in the Village's favor on count II.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

GORDON and COUSINS, JR., JJ., concur.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

NORMAN W. DEPLUZER, PETITIONER

v. No. 99 C 947

THE STATE OF ILLINOIS, et al., RESPONDENT

HON. REBECCA R. PALLMEYER, Judge

Date: 03/22/99

ORDER

Mr. DePluzer's motion for reconsideration of the court's dismissal of his complaint is denied. This order is final and appealable. Plaintiff Norman W. DePluzer moves for reconsideration of this court's order dated 3/16/99, which Mr. DePluzer characterizes as an order granting Defendant's motion to dismiss. In fact, the court did not consider or rule on defendant's motion. Instead, on it's own motion this court dismissed Plaintiff's complaint on an initial on February 25, 1999 on the basis that this court lacks jurisdiction to consider what appears to be a challenge to a decision of an Illinois State court.

Mr. DePluzer's motion for reconsideration of this court's dismissal of his complaint is denied. This order is final and appealable.

[Dated June 30, 1994]

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

NORMAN DEPLUZER,	)	
	)	
Plaintiff-Appellee and	)	
Cross-Appellant,	)	
v.	)	No. 1-93-1430
	)	
	)	
THE VILLAGE OF WINNETKA,	)	
	)	
Defendant-Appellant	)	
and Cross-Appellee.	)	

ORDER

Plaintiff-Appellee's petition for rehearing is denied.

/s/ James C. Murray
Presiding Justice

/s/ Joseph Gordon
Justice

/s/ William Cousins, Jr.
Justice

(*Letterhead of*)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Illinois 62706
(217) 782-2035

December 6, 1994

No. 77952 – Norman DePluzer, petitioner v. Village of Winnetka, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this court will issue to the Appellate Court on December 28, 1994.

United States Court of Appeals
For the Seventh Circuit
Chicago, IL 60604

December 22, 1999

Before

Hon. William J. Bauer, Circuit Judge
Hon. John L. Coffey, Circuit Judge
Hon. Daniel A. Manion, Circuit Judge

NORMAN W. DEPLUZER,

Plaintiff-Appellant,

No. 99-2009 v.

STATE OF ILLINOIS and
VILLAGE OF WINNETKA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 99 C 947—Rebecca R. Pallmeyer, Judge.

ORDER

On consideration for the petition for rehearing and petition for rehearing en-banc filed in the above-entitled cause on December 6, 1999, by the plaintiff-appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.